

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CRISTINA LIMON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:21-cv-00820-EPG

FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF'S SOCIAL  
SECURITY COMPLAINT

(ECF Nos. 13, 14, 15)

This matter is before the Court on Plaintiff Cristina Limon's ("Plaintiff") complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration regarding her application for Social Security Disability Insurance. The parties have consented to entry of final judgment by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 8-10.)

The matter was taken under submission on the parties' briefs without a hearing. Having reviewed the record, the administrative transcript, the parties' briefs, and the applicable law, the Court finds as follows:

**I. DISCUSSION**

**A. Dr. Schwartz's Medical Opinion**

Plaintiff first argues that the Administrative Law Judge ("ALJ") erred in weighing

consultative examiner Arthur Schwartz, M.D.'s medical opinion. (ECF No. 13 at 8-11.)

1. Legal Standards

In this circuit, courts distinguish the opinions of three categories of physicians: (1) treating physicians; (2) examining physicians, who examine but do not treat the claimant; and (3) non-examining physicians, who neither examine nor treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). In general, the opinion of a treating physician is afforded the greatest weight. *Id.*; see also 20 C.F.R. § 404.1527(d)(2); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Further, an examining physician's opinion is given more weight than the opinion of non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). The Ninth Circuit has held regarding such opinion testimony:

The medical opinion of a claimant's treating physician is given "controlling weight" so long as it "is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(c)(2). When a treating physician's opinion is not controlling, it is weighted according to factors such as the length of the treatment relationship and the frequency of examination, the nature and extent of the treatment relationship, supportability, consistency with the record, and specialization of the physician. *Id.* § 404.1527(c)(2)–(6). "To reject [the] uncontradicted opinion of a treating or examining doctor, an ALJ must state clear and convincing reasons that are supported by substantial evidence." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (alteration in original) (quoting *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005)). "If a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence." *Id.* (quoting *Bayliss*, 427 F.3d at 1216); see also *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) ("[The] reasons for rejecting a treating doctor's credible opinion on disability are comparable to those required for rejecting a treating doctor's medical opinion."). "The ALJ can meet this burden by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (quoting *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986))

*Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017).<sup>1</sup>

The Court must affirm the Commissioner's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record. 42 U.S.C. §

<sup>1</sup> The Social Security Administration has adopted new rules applicable to claims filed after March 27, 2017, which revise the rules regarding evaluation of medical opinions. However, these revisions do not apply to Plaintiff's claim, which was filed in 2015.

405(g); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Coleman v. Saul*, 979 F.3d 751, 755 (9th Cir. 2020) (“Substantial evidence means more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”). It is the ALJ’s responsibility to resolve conflicts in the medical evidence and ambiguities in the record. *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 2020). Where this evidence is “susceptible to more than one rational interpretation,” the ALJ’s reasonable evaluation of the proof should be upheld. *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008).

## 2. Analysis

On April 27, 2019, Plaintiff underwent a consultative examination with Dr. Schwartz, an orthopedist. (A.R. 950.) Dr. Schwartz opined that Plaintiff’s maximum standing, walking, and sitting capacities were “[u]p to four hours and limited” because of neck and back pain. (A.R. 953.) Plaintiff could lift, carry, and pull up to ten pounds, “limited by neck and back pain.” (*Id.*) She could frequently reach overhead, reach forward, handle, finger, and feel, “limited by pain in the shoulders and numbness of the hands.” (*Id.*) Working at heights, around heavy machinery, extreme temperatures, chemicals, dust, fumes, gases, and excessive noises “all should be limited and would be hazardous for her.” (*Id.*)

Dr. Schwartz also completed a Medical Source Statement dated April 27, 2019, and checked boxes indicating Plaintiff could occasionally lift and carry up to 20 lbs. (A.R. 954.) Additionally, Plaintiff could sit, stand, and walk for up to one hour without interruption and up to three hours total in an eight-hour workday. (A.R. 955.) She could frequently reach, handle, finger, feel, and push/pull with both the right and left hand, and could occasionally operate foot controls with the left and right feet. (A.R. 956.) Dr. Schwartz opined that Plaintiff could never climb stairs and ramps, climb ladders or scaffolds, balance, stoop, kneel, crouch, or crawl. (A.R. 957.) Plaintiff could not walk a block at a reasonable pace on rough or uneven surfaces, use standard public transportation, or sort, handle, or use paper/files. (A.R. 958.) When asked to identify the particular medical or clinical findings supporting his opinions, Dr. Schwartz either did not respond or listed Plaintiff’s symptoms of shoulder, neck, back, hand, and knee pain, weakness, and numbness of hands. (A.R. 954-958.)

1 Dr. Schwartz's opinion was contradicted by State Agency Physicians Dr. S. Niknia and  
2 Dr. Sandra Battis, both of whom opined that Plaintiff's functional limitations were less severe  
3 than those opined by Dr. Schwartz. (A.R. 119-21, 134-36.) Thus, the Court examines whether the  
4 ALJ provided specific and legitimate reasons supported by substantial evidence for discounting  
5 Dr. Schwartz's opinion.

6 The ALJ weighed Dr. Schwartz' opinion as follows:

7 In April 2019, the claimant underwent consultative orthopedic examination by Dr.  
8 Arthur Schwartz. She complained of neck, back, shoulder, knee, and ankle pain.  
9 She alleged that she had pain throughout her body. She stated that she lived with  
10 her two children and a friend. She stated that she was able to drive, shop, watch  
television, and take care of her two children. She reported that her friend helped  
with the household chores.

11 The physical examination revealed that the claimant appeared healthy. She had  
12 good range of motion and muscle strength throughout. She did not have significant  
neurological impairment.

13 Dr. Schwartz diagnosed cervical spondylitis with sciatica, right shoulder  
impingement syndrome, and right ankle arthritis.

14 The diagnosis appeared based on subjective complaints because there was a lack  
15 of findings upon examination. He opined that the claimant could lift, carry, and  
16 pull up to 10 pounds frequently and occasionally and sit, stand, and walk up to 4  
17 hours. He opined that the claimant was precluded from climbing, stooping,  
18 crouching, kneeling, and crawling. He opined that the claimant was limited to  
frequent reaching overhead and forward, handling, fingering, and feeling. He  
opined that the claimant had limited ability to work at heights, around heavy  
machinery, temperature extremes, chemicals, dust, fumes, gases, and excessive  
noise (Exhibit 41F).

19 The evaluation of Dr. Schwartz was given partial probative weight. The lack of  
20 findings upon examination was consistent with the overall record, but some of the  
21 assessed functional limitations were not warranted. They were based on the  
22 claimant's subjective allegations rather than objective evidence based upon the  
examination. Another consideration was that no other medical source assessed  
such severe functional limitations.

23 (A.R. 40.)

24 Plaintiff does not dispute that the reasons the ALJ identified for discounting Dr. Schwartz'  
25 opinion were legally sufficient. Instead, Plaintiff argues that these findings were contradicted by  
26 the record and therefore were not supported by substantial evidence. (ECF No. 13 at 8-11.)

27 Here, the ALJ gave Dr. Schwartz's opinion partial weight because the functional  
28 limitations he described were based on Plaintiff's subjective allegations rather than the objective

1 medical evidence. The Ninth Circuit has explained that an ALJ may reject a physician's opinion  
2 that is premised on a claimant's own subjective complaints that the ALJ properly discredited.  
3 *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041  
4 (9th Cir. 2008) ("An ALJ may reject a treating physician's opinion if it is based 'to a large extent'  
5 on a claimant's self-reports that have been properly discounted as incredible.") (quoting *Morgan*  
6 *v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)).

7 Plaintiff argues that Dr. Schwartz relied on his examination findings and not her  
8 subjective reports. (ECF No. 13 at 10-11.) However, when asked to identify the particular  
9 medical or clinical findings supporting his assessment, Dr. Schwartz did not list his examination  
10 findings or any other objective medical findings. (A.R. 954-58.) Instead, Dr. Schwartz only  
11 identified Plaintiff's pain symptoms or did not respond at all. (*Id.*) Additionally, as discussed  
12 further below, the ALJ properly discounted Plaintiff's subjective symptom testimony. Thus, the  
13 ALJ's finding that Dr. Schwartz unduly relied on Plaintiff's subjective complaints is reasonable  
14 and supported by substantial evidence.

15 The ALJ also discounted Dr. Schwartz's opinion because the opined limitations were  
16 inconsistent with the overall record and his own examination findings. In arguing that this finding  
17 was not supported by substantial evidence, Plaintiff points to Dr. Schwartz's physical  
18 examination revealing numbness in the hands, some reduced lumbar flexion, shoulder motion  
19 "somewhat painful," and straight leg revealing "a pulling pain in the lumbosacral area." (ECF No.  
20 13 at 9.; A.R. 951-52.) Plaintiff also cites to four MRIs and various examinations which indicated  
21 pain, tenderness, swelling, decreased range of motion, and decreased strength in Plaintiff's back,  
22 shoulder, hip, and upper extremity. (ECF No. 13 at 9-10.) However, the examination findings and  
23 other medical records Plaintiff cites do not reflect the same severity as the limitations in Dr.  
24 Schwartz's opinion.

25 Additionally, the Court has reviewed the ALJ's citations to the record and they contain  
26 several examples of modest medical findings and conservative treatment. For example, after her  
27 right carpal tunnel surgery, Plaintiff reported mild pain and her treating physician noted  
28 improvement in range of motion and recommended that she return to work. (A.R. 37, 631, 645.)  
Diagnostic testing frequently described Plaintiff's results as slight, mild, or moderate. (A.R. 37-

38, 40, 631, 639, 644, 707, 718, 817-18, 936-37, 959, 1015, 1108-09.) Plaintiff also typically described her shoulder and lower back pain as between a 3/10 and a 5/10 or 6/10, and reported that medication improved her pain. (A.R. 38, 681, 687, 692, 719, 721, 756, 761, 765, 772, 775, 781, 788, 793, 798, 853, 858, 863, 872, 880, 884, 889, 894-95, 899, 922, 940.)

Having reviewed the record, including evidence that supports and detracts from the ALJ's finding, the Court finds that the ALJ's interpretation of Dr. Schwartz's opinion as inconsistent with his examination and the overall record is rational and supported by substantial evidence. Although Plaintiff may disagree with the ALJ's assessment of the evidence, "[w]hen the evidence before the ALJ is subject to more than one rational interpretation, [the Court] must defer to the ALJ's conclusion." *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004); *see also Andrews v. Shalala*, 53 F.3d 1035, 1039-40 (9th Cir. 1995) ("The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities. We must uphold the ALJ's decision where the evidence is susceptible to more than one rational interpretation.") (citation omitted); *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) ("Where, as here, the ALJ has made specific findings justifying a decision to disbelieve an allegation . . . and those findings are supported by substantial evidence in the record, our role is not to second-guess that decision.") (citation omitted).

In light of the foregoing, the Court finds that the ALJ provided specific and legitimate reasons supported by substantial evidence in discounting Dr. Schwartz's medical opinion.

### **B. Subjective Symptom Testimony**

Plaintiff next argues that the ALJ erred in his evaluation of her subjective symptom testimony. (ECF No. 13 at 11-16.)

#### **1. Legal Standards**

The Ninth Circuit has summarized the ALJ's task with respect to assessing a claimant's credibility as follows:

To determine whether a claimant's testimony regarding subjective pain or symptoms is credible, an ALJ must engage in a two-step analysis. First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged. The claimant, however, need not show that her impairment could reasonably be expected to cause the severity of the symptom she

1 has alleged; she need only show that it could reasonably have caused some degree  
2 of the symptom. Thus, the ALJ may not reject subjective symptom testimony ...  
3 simply because there is no showing that the impairment can reasonably produce  
4 the degree of symptom alleged.

5 Second, if the claimant meets this first test, and there is no evidence of  
6 malingering, the ALJ can reject the claimant's testimony about the severity of her  
7 symptoms only by offering specific, clear and convincing reasons for doing so[.]

8 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citations and quotation marks  
9 omitted).

10 In weighing a claimant's credibility, an ALJ may consider, among other things, the  
11 claimant's reputation for truthfulness, inconsistencies either in the claimant's testimony or  
12 between her testimony and her conduct, the claimant's daily activities, her work record, and  
13 testimony from physicians and third parties concerning the nature, severity, and effect of the  
14 claimant's symptoms. *Thomas v. Barnhart*, 279 F.3d 947, 958-59 (9th Cir. 2002) (citation  
15 omitted). If the ALJ's credibility finding is supported by substantial evidence in the record, the  
16 Court "may not engage in second-guessing." *Id.*

## 17 2. Analysis

18 Given that there is objective medical evidence of an underlying impairment in this case,  
19 the Court examines whether the ALJ rejected Plaintiff's subjective symptom testimony by  
20 offering specific, clear, and convincing reasons.

21 In his opinion, the ALJ evaluated Plaintiff's subjective symptom testimony as follows:

22 The claimant testified that she suffered from diabetes mellitus, neck and back pain,  
23 knee pain, right shoulder pain, and carpal tunnel syndrome. She stated that she had  
24 past work as a sales associate. She testified that she had a high school education  
25 and two years of college. She stated that she lived in an apartment with her two  
26 children, ages 10 and 7. She stated that she quit her job because she had right  
27 carpal tunnel release surgery.

28 The claimant testified that she was able to take care of her personal hygiene with  
difficulty buttoning her clothes, watch television, prepare meals for her children,  
help her children with their homework, read, and use a computer for 8 hours per  
day.

The claimant testified that her aunt helps her with the household chores and  
childcare. She acknowledged that she was able to lift up to 20 pounds, sit up to 4  
hours, and stand up to 2 hours.

It is important to note that the claimant testified that she did not take any pain  
relief medication. She stated that she had pursued physical therapy for pain relief.



1 She stated that she had attended two or three acupuncture sessions, but that  
 2 treatment did not relieve her pain. She stated that she had sought intermittent  
 3 chiropractic treatment, ice, heat, and the use of topical cream. She described her  
 pain as moderate of 5-6 on a scale of 10. She alleged that medication did not  
 control her diabetes.

4 The claimant's testimony was not supported by the medical evidence to the extent  
 5 that she alleged an inability to perform any work activity. The medical findings  
 6 were modest and her treatment has been entirely conservative since the 2015 right  
 7 carpal tunnel release. She described a normal range of daily activities including  
 caring for her two young children, which was inconsistent with the allegation of  
 near total dysfunction. She also acknowledged being able to lift up to 20 pounds,  
 which was consistent with the finding herein that the claimant can perform a range  
 of light work.

8 . . .

9 The allegation of disability was severely damaged by the lack of objective physical  
 10 findings upon numerous physical examinations, x-rays, MRI scans, lab tests, and  
 11 electrodiagnostic studies. The most significant findings was right carpal tunnel  
 syndrome for which she underwent successful surgery and her surgeon advised her  
 to return to work shortly after the surgery.

12 The allegation of disability was undermined by the claimant's reports in the record  
 13 regarding her functional capacity and daily activities. The claimant testified that  
 14 she was able to take care of her personal hygiene with difficulty buttoning her  
 clothes, watch television, prepare meals for her children, help her children with  
 their homework, read, and use a computer for 8 hours per day.

15 In an April 2016 exertional activities report, the claimant stated that she was able  
 16 to lift her daughter for 20 minutes at a time, do the laundry, clean the kitchen,  
 17 clean the living room, drive, lift groceries, shop in stores, and walk up to 30  
 minutes (Exhibit 10E).

18 The claimant told Dr. Schwartz that she was able to drive, shop, watch television,  
 19 and take care of her two children. These activities were consistent with a much  
 wide [sic] range of functional capacity than alleged by the claimant and conflicted  
 with the allegation of disability.

20 After careful consideration of the evidence, the undersigned finds that the  
 21 claimant's medically determinable impairments could reasonably be expected to  
 22 cause the alleged symptoms; however, the claimant's statements concerning the  
 intensity, persistence and limiting effects of these symptoms are not entirely  
 consistent with the medical evidence and other evidence in the record for the  
 reasons explained in this decision.

23 (A.R. 36, 42.)

24 Plaintiff again does not dispute that the reasons the ALJ identified for discounting her  
 25 subjective symptom testimony were legally sufficient and solely argues that they were not  
 26 supported by substantial evidence. (ECF No. 13 at 11-16.) Specifically, Plaintiff contends that the  
 27 objective medical evidence supports her testimony, and cites to medical records that she contends  
 28



1 demonstrate “significant abnormalities during physical examinations and diagnostic studies.”  
2 (ECF No. 13 at 12-13.) The Commissioner, in turn, asserts that Plaintiff’s arguments, even if they  
3 have merit, “do not erase the wealth of mild and normal findings cited by the ALJ” and those  
4 findings are sufficient to meet the substantial evidence standard. (ECF No. 14 at 4.) The Court  
5 agrees.

6 The medical evidence Plaintiff relies on does not demonstrate that she is unable to  
7 perform any work activity. Further, as discussed above, the medical record contains several  
8 examples of examinations, diagnostic testing, and Plaintiff’s own reports indicating her symptoms  
9 were mild or moderate. Notably, Plaintiff cites to several of these same records in support of her  
10 argument that her limitations were “significant.” (*See* ECF No. 13 at 12-13.) Having reviewed the  
11 ALJ’s reasoning and underlying citations, and in light of the record as a whole, the ALJ did not  
12 err in finding that Plaintiff’s subjective symptom testimony was not supported by the objective  
13 medical evidence.

14 Plaintiff also contends that the ALJ’s characterization of her treatment as conservative  
15 was inaccurate. (ECF No. 13 at 15-16.) Specifically, Plaintiff was treated with pain medication  
16 and injections, which the Ninth Circuit has suggested are not conservative treatments  
17 undermining Plaintiff’s allegations of pain. (*Id.*) The Commissioner argues that Plaintiff does not  
18 address all of the evidence cited by the ALJ, including some success with chiropractic treatment,  
19 progress from physical therapy, reports of improvement with medication, and reduction of pain  
20 with a Cam boot, all of which were sufficient to “cast further doubt over claims of debilitation.”  
(ECF No. 14 at 4-5.)

21 In *Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017), the Ninth Circuit rejected the  
22 ALJ’s finding that the claimant’s conservative treatment undercut her testimony because that  
23 finding was not supported by the record. There, the claimant was treated with Valium, Vlector,  
24 Soma, Vicodin, Percocet, Neurontin, Robaxin, Trazodone, and Lyrica, in addition to facet and  
25 epidural injections in her neck and back and steroid injections in her hands. *Id.* The *Revels* court  
26 found that this was not conservative treatment for fibromyalgia because it was “significantly more  
27 aggressive than the type of fibromyalgia treatment [that was] found to be conservative” in other  
28 cases. *Id.* Other cases where courts have held that pain medication and injections do not constitute

1 conservative treatment have typically involved claimants whose pain was treated with a series of  
2 regular injections and more invasive procedures, and that treatment was generally ineffective.  
3 *See, e.g., Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (physical therapy and epidural  
4 shots were not conservative treatment where they were ineffective in treating pain); *Veliz v.*  
5 *Colvin*, 2015 WL 1862824, at \*8 (C.D. Cal. Apr. 23, 2015) (collecting cases).

6 Here, Plaintiff was prescribed Tramadol and Gabapentin<sup>2</sup> and also received pain relief and  
7 steroid injections in 2016 and 2017 to treat her right ankle, right wrist, right shoulder, and back  
8 pain. (A.R. 481-82, 665, 685, 720, 732, 924.) Plaintiff repeatedly described her pain as being  
9 between a 3/10 and 5/10 or 6/10 and reported pain improvement from both forms of treatment.  
10 (See, e.g., A.R. 482, 654, 666, 668, 675, 682, 685, 687, 692, 719, 732, 756, 761, 765, 772, 775,  
11 781, 788, 793, 798, 853, 858, 863, 872, 880, 884, 889, 894-95, 899, 922, 924.) Plaintiff also  
12 testified at the hearing that she was not taking any medication for pain other than Ibuprofen. (A.R.  
13 94.)

14 Plaintiff's treatment does not resemble what the claimant received in *Revels* or the other  
15 cases where pain medication and injections were not considered to be conservative. *See Warre v.*  
16 *Comm'r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that can be  
17 controlled effectively with medication are not disabling[.]"). Additionally, the ALJ noted that  
18 Plaintiff received other forms of conservative treatment which improved her condition, including  
19 physical therapy, chiropractic treatment, and a Cam boot. (A.R. 36-39.) Plaintiff does not dispute  
20 that this treatment was conservative, argue that the pain medication and injections were  
21 ineffective, or point to any other invasive procedures or treatments. Considering the record as a  
22 whole, the ALJ's characterization of Plaintiff's treatment as conservative was reasonable and  
23 supported by substantial evidence.

24 Finally, Plaintiff argues that the ALJ erred in finding that her daily activities undermined  
25 her allegations of disability. (ECF No. 13 at 13-14.) Specifically, Plaintiff contends that the ALJ  
26 mischaracterized her testimony regarding her daily activities, and the minimal activities described  
27 by the ALJ did not contradict Plaintiff's allegations of pain and physical disability. (*Id.* at 14.)

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28 <sup>2</sup> At certain points, it appears Plaintiff was also prescribed Naproxen and Celebrex. (See A.R. 731, 734.) However, Plaintiff's briefing does not address whether these medications should be considered conservative treatment. (*Id.*)

1 The Commissioner, in turn, argues that Plaintiff's daily activities "seem inconsistent with  
2 complaints of disabling pain and difficulty using her hands." (ECF No. 14 at 5.)

3 The Court agrees that the ALJ's description of Plaintiff's testimony regarding her daily  
4 activities is not supported by substantial evidence. The ALJ described Plaintiff's testimony as  
5 being able to "take care of her personal hygiene with difficulty buttoning her clothes, watch  
6 television, prepare meals for her children, help her children with their homework, read, and use a  
7 computer for 8 hours per day."<sup>3</sup> (A.R. 36, 42.) Plaintiff's testimony regarding these activities was  
8 in response to the ALJ's question, "tell me what you do on an average day, what do you do all  
9 day long? What kinda things do you do?" (A.R. 92.) Plaintiff did not testify how many hours per  
10 day was spent performing each of these activities, either individually or collectively. The Court  
11 also questions whether these activities are sufficient to undermine Plaintiff's allegations of  
12 disability. However, the Court need not resolve this issue because, as discussed above, the ALJ  
13 found other legally sufficient reasons for discounting Plaintiff's subjective symptom testimony,  
14 *i.e.* inconsistency with the objective medical evidence and a conservative course of treatment.  
15 Thus, the ALJ's credibility determination must be upheld. *Batson v. Comm'r of Soc. Sec. Admin.*,  
16 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that ALJ's decision must be upheld where certain  
17 reasons were invalid but the ultimate credibility determination was supported by substantial  
18 evidence).

19 In light of the record as a whole, the Court finds that the ALJ did not err in discounting  
20 Plaintiff's subjective symptom testimony.

## 21 **II. CONCLUSION AND ORDER**

22 In light of the foregoing, the decision of the Commissioner of Social Security is supported  
23 by substantial evidence, and the same is hereby affirmed.

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28 <sup>3</sup> In her brief, Plaintiff argues that the ALJ found that she could use the computer for eight hours per day. (*See* ECF No. 13 at 15.) While somewhat unclear, it appears that the ALJ's finding related to all of the listed activities and not solely the use of a computer.

1 The Clerk of the Court is directed to close this case.

2  
3 IT IS SO ORDERED.

4 Dated: April 25, 2022

/s/ Eric P. Groj  
UNITED STATES MAGISTRATE JUDGE